Supreme Court, U.S.
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NO.

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1996

GABRIEL STANESCU and STELLA STANESCU,

Petitioners

VS.

AETNA LIFE AND CASUALTY INSURANCE COMPANY,

Respondent

PETITION FOR A WRIT OF CERTIORARI
TO THE
UNITED STATES COURT OF APPEALS FOR
THE SECOND CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Submitted by:

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82pp

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QUESTIONS PRESENTED

Did the District Court err in dismissing the Complaint on the ground that Aetna Life and Casualty was not acting under color of state law when it operated to deprive appellant Gabriel Stanescu of his civil rights?

Did the United States Court of Appeals for the Second Circuit err in upholding the District Court's dismissal of the Complaint?

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OPINIONS BELOW

The final decision of the United States District Court, District of Connecticut, dismissing appellants' Complaint, is unreported and is printed in Appendix A, Page A.

The denial of petitioner's appeal of the District Court's decision to the United States Court of Appeals for the Second Circuit is also unreported and is printed in Appendix A, Pages A1-A.

JURISDICTION

The denial of petitioner's appeal by the United States Court of Appeals for the Second Circuit was filed on August 16, 1996 and issued as a Mandate on September 11, 1996. The jurisdiction of the United States Supreme Court is invoked under 28 U.S.C. 1254, Rule 10 et

al of the Rules of the Supreme Court, and Article III, Sec. 2 of the U.S. Constitution.

STATEMENT OF CASE FACTS

The facts relevant to this petition, accepted as true by the District Court and the U.S. Court of Appeals, are as follows: On April 18, 1991, Gabriel Stanescu suffered a work-related injury to his back. He subsequently filed a claim under the Connecticut workers Compensation Act. The claim was accepted and Mr. Stanescu received benefits through his employer's workers' compensation carrier, Aetna Life And Casualty Insurance Co.(Aetna).

On June 7, 1991, Mr. Stanescu underwent spinal disc surgery. Following

the surgical procedure several physicians found him to be totally disabled. It was at this time that Aetna began to refuse to tender compensation benefits in a timely manner also to approve certain medical treatments and procedures recommended by Mr. Stanescu's authorized medical treaters. Moreover, Aetna would not settle Mr. Stanescu's claim and, on October 21, 1993, referred his claim to the Connecticut Second Injury Fund.

As a result of Aetna's actions, Mr. Stanescu's medical condition has worsened and he has experienced severe psychological difficulties. Additionally, he has suffered financial hardship, including damage to his credit standing. Mr. Stanescu's difficulties have, in turn, caused financial and

psychological hardships for his wife, Stella Stanescu.

Aetna is a publicly owned insurance company regulated by the Connecticut Department of Insurance and the Connecticut Workers' Compensation Act. The Workers' Compensation Act provides the exclusive remedy to the petitioner to obtain compensation for his work-related injuries. Mr. Stanescu is now receiving spinal injections of morphine twice monthly to deal with his chronic and debilitating pain.

Mr. Stanescu alleged in his District Court Complaint that Aetna deprived him of his civil rights and invoked original jurisdiction under 42 U.S.C. 1983. In his appeal to the U.S. Court of Appeals to the Second Circuit, Mr. Stanescu invoked

jurisdiction under 28 U.S. C. 1291.

REASONS FOR GRANTING WRIT

Generally, a Complaint should not be dismissed for failure to state a claim upon which relief can be granted unless it affirmatively appears that a plaintiff can prove no set of facts which would provide a basis for any relief; the Court must accept as true all factual allegations and reasonable inferences therefrom. See Scheuer v. Rhodes, 416 US 232,236 (1974); Easton v. Sundrama, 947 F2d 1011, 1014-15 (2d Cir 1991), Cert. denied, 504 US 911 (1992). Moreover, dismissal under Rule 12(b)(6) is not proper unless it is clear that no possible amendment could save the complaint. Robertson v. Dean Witter

Reynolds, Inc., 749 F2d 530 (9th Cir. 1984).

With regard to a complaint alleging violations of civil rights, the criteria for dismissal are (1) whether the complaint alleges sufficient facts so as to preclude a determination that it is frivolous and (2) whether the defendants can glean enough information from the complaint in order to frame an answer. District Council 14, American Federation of State and Municipal Employees v. Bradley, 795 F2d 310 (3rd Cir. 1986). In responding to a defendant's Motion To Dismiss, it is not incumbent upon plaintiffs to provide proof of their claims nor must they present all available evidence. Id.

In the instant dispute, the District

Court and the Court of Appeals accepted as true virtually all of the material facts set forth in the Complaint and Amended Complaint regarding the misconduct carried out by Aetna toward Gabriel Stanescu, and the harm that resulted therefrom (Appendix , pp A -A). Therefore, what remains is a determination as to whether these facts rise to the level of a violation of Mr. Stanescu's civil rights under color of state law. Section 1983 was enacted in order to establish a civil cause of action for damages against a person who, acting under color of state law, deprives another of a right, privilege or immunity secured by the Constitution or laws of the United States. 42 U.S.C. 1983; Lugar v. Edmondson Oil Co., 457 U.S. 922

(1982). An entity that functions as a "state actor" is deemed to be "acting under color of state law" for the purposes of a Section 1983 claim. Lugar, p. 935.

The Supreme Court has recognized that a procedural scheme created by state statute is a product of state action. Therefore, it is subject to constitutional restraints and may be addressed by means of a Civil Rights action. Id. Moreover, a corporate entity acting pursuant to state law which deprived an individual of a constitutionally protected right is acting under color of state law. Id. A private party's joint participation with state officials in the seizure of disputed property is sufficient to

characterize that conduct as "state action". Id. In this context, joint participation does not require something more than invoking the aid of state officials to take advantage of state created procedures.

An entity loses private status and becomes instead a "state actor" when it carries out policies in "close nexus" with a State entity. Lugar, pp. 934-937; Baksalary v. Smith, 579 F. Supp. 218, 227 (1984). In the case at bar, Aetna acted in "close nexus" with the State of Connecticut when it deprived appellant Gabriel Stanescu of his civil rights; the insurance carrier must therefore be considered a state actor for the purposes of this case. Accordingly, Aetna was acting "under color of state law" when it

engaged in the misconduct alleged in the Complaint.

Licensing and regulation alone do not make an insurer a state actor. However, if the allegations of delayed and denied claims by an insurance carrier are "significantly encouraged" by the state authority, then the actions of the insurer are done under color of state law. See, e.g., Koller v. Aetna Life Insurance Co., 717 F. Supp. 648 (1988). An action can be maintained where it is alleged that the regulatory agency has encouraged the practice in question, or at least given its affirmative approval to the practice. See, e.g., Cohen v. Illinois Institute of Technology, 524 F.2d 818 (7th Cir. 1975).

In Baksalary v. Smith, 579 F. Supp.

218, 227 (1984), a case with facts somewhat similar to those involved here, the U.S. District Court for the Eastern District of Pennsylvania found that a private insurer acted under color of state law when it terminated an individual's benefits pursuant to that state's worker's compensation statutes. In reaching that conclusion, the District Court applied principles propounded in a trilogy of United States Supreme Court cases, Lugar v. Edmondson Oil Co., 457 U.S. 922 (1982); Rendell-Baker v. Kohn, 467 U.S. 830 (1982) and Blum v. Yaretsky, 457 U.S. 991 (1982), all of which involved the issue of "state action."

Relying heavily on Lugar, the Baksalary Court held that because the right to benefits was created by the

state, the deprivation thereof by the insurer constituted a violation of the claimant's right to due process of law guaranteed under the Fourteenth Amendment to the United States Constitution. The Court further held that the private insurer "jointly participated" with state officials when it acted to terminate the worker's compensation benefits of the plaintiff. This joint participation was manifested in the insurer's invocation of the state statutory provision allowing for termination of such benefits. This invocation, along with the fact that the insurer was required to file the termination notice with the state for a review of technical compliance with state law, placed the actions of the insurer within the ambit of "state action." 579

F.Supp. at pp. 230-231.

The analysis and application of Supreme Court precedent by the Baksalary Court is also appropriate in the case at bar. Even more so than the insurer in Baksalary, the insurer in this case, Aetna, engaged in "joint participation" with the State of Connecticut when it acted to deny and deprive Gabriel Stanescu of his civil rights. Like the claimant in Baksalary, Mr. Stanescu was precluded by the Connecticut's Workers' Compensation Act[1] ("the Act") from bringing direct legal action against his employer for a serious and debilitating injury that occurred while he was working at his job. That is because the Act strips an employee of his common law and

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[1]Appendix, pp.A16-A18.

statutory rights to maintain a tort action against his employer and forces that person to instead seek relief vis a vis a complex and archaic adjudicative system created and implemented by the State. The system is wholly administered by the State, and in cases involving the Second Injury Fund2, the State actually becomes a party to the claim and often advocates against the employee's interests, as more fully discussed below.

It is the exclusive nature of the Act that accorded Aetna the ability and incentive to manipulate the Act's provisions in such a way as to unilaterally prescribe the course of Mr. Stanescu's medical treatment. Unfortunately, that prescription

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2Appendix, pp. A23-A24.

seriously undermined his overall health and future enjoyment of life, instead of leading him toward maximum medical recovery. Aetna's misconduct was manifested in its failure to authorize payment for future necessary medical treatment, its failure to acknowledge recommendations made by Mr. Stanescu's treating physicians regarding further treatment, and its failure to pay outstanding bills for medical treatment that had already been authorized and provided, leading to economic hardship.

The impact and effect of the exclusivity of the Act, and Aetna's exploitation of it, is better understood when one considers that appellant's health insurance carrier declined payment for medical services because he was

injured while in the course of his employment, which is an exclusion under his health insurance policy, and under most policies of that type. His automobile insurer refused payment on similar grounds. The end result was a man with a multitude of insurance policies providing coverage for physical and mental injuries who was precluded from procuring the benefits of those policies because of laws passed by the State of Connecticut mandating that he look only to the worker's compensation carrier (Aetna) for relief. That kind of prejudice to appellant's rights is real and substantial.

In a nutshell, appellant Gabriel Stanescu was left ot the absolute whim of the respondent insurance company

regarding his own critical medical care and treatment. As demonstrated in this case, it is contrary to good sense, good law and good medicine for a person's health and well being to be left to the unbridled discretion of corporations who have an inherent bias toward limiting medical care expenditures in order to boost profits for their shareholders and executives. The exclusive nature of the Act provided the foundation upon which Aetna was able to completely dictate to appellant how and by whom he was going to be treated (or more appropriately, not treated) for his injuries, which actions by appellee caused him further physical, emotional and financial harm, instead of affording him the remedial relief which the Act is purportedly supposed to

provide.

The close nexus and joint participation between the State and Aetna is further delineated in situations where, as here, the Second Injury Fund (the "Fund") becomes a party to the proceedings. The Fund is a State created and administered monetary fund which was set up for the ostensible purpose of, inter alia, giving relief to insurance companies faced with the dilemma of paying benefits to covered employees whose current injuries could also be traced to a pre-existing, work-related injury. C.G.S. 31-349(a).

The Second Injury Fund, in essence, acts as an insuring entity to the extent that it is liable to pay benefits to covered employees for that part of his or

her injury which is attributable to a pre-existing injury. Id. Moreover, the Fund is also obligated to pay the entire portion of benefits due in situations where an insurance company "fails or is unable to pay the compensation" that it is supposed to pay. C.G.S. Section 31-355.

In either case, once the Second Injury Fund becomes a party to a Worker's Compensation proceeding, it "steps into the shoes" of the original insurance carrier in that all the rights, privileges and defenses that the insurance carrier had exercised and advocated previously are thereafter relied upon and advocated by the Fund. An example of this can be found in cases where an insurance carrier hires a non-

treating physician to try and establish a lower permanent partial disability rating than that given by the treating physician, for the purpose of limiting the insurer's financial exposure. In such cases, the Fund is subsequently allowed to rely upon and advocate that same lower disability rating if and when it takes over the file. The Fund, like the original insurer, has a vested interest in avoiding or limiting benefits payable under the Act. The bottom line matters as much or more to the Second Injury Fund as it does to the insurance carrier.

Even more illuminating is the fact that the Second Injury Fund has its own cadre of lawyers and legal staff who are involved in adjusting and adjudicating worker's compensation claims. It is not

at all uncommon for a claimant to have to initially deal with and argue against insurance defense lawyers only to have the file transferred to the Second Injury Fund whereby the claimant must then battle it out with lawyers paid by and acting on behalf of the State of Connecticut. In such cases, the claim does not change; only the party-opponent and its legal counsel does. In light of the reality, a "close nexus" existed between Aetna and the State of Connecticut's Second Injury Fund in this case.

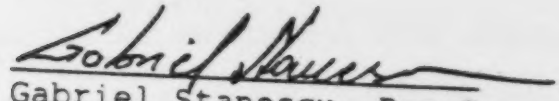
As noted above, the State had every reason to yield while Aetna assumed and carried out an unlawful position against Mr. Stanescu, since the State knew that, at some point, it could very well become

a party against the claimant itself. Hence, there existed a clear commonality of interest between the Second Injury Fund and the Worker's Compensation insurance carrier in this case because each entity was required to defend against the same exact worker's compensation claim. Joint participation between the two entities was a natural and inevitable phenomenon.

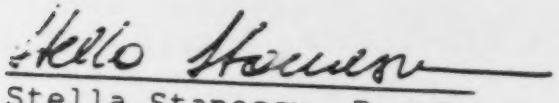
Finally, it is noteworthy that appellants in this case are not merely claiming that Aetna has manipulated and violated the State Worker's Compensation Act to their detriment and prejudice. While that is true, more important are the resulting violations of the federal constitutional and civil rights of the appellants which provide the subject

matter for this federal cause of action. In their Complaint, appellants seek relief from conduct by Aetna that has violated, and continues to violate, the federal constitutional and civil rights of the appellants. Accord, Pennhurst State School & Hosp. v. Halderman, 465 U.S. 89 (1984).

Petitioners,



Gabriel Stanescu, Pro Se



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8. Text of 42 United States Code Section 1983.....A27

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERALREPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF
THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the 16 day of August, one thousand nine hundred and ninety-six.

PRESENT:

HON. GUIDO CALABRESI,
HON. FRED I. PARKER,
Circuit Judges.

HON. LOUIS H. POLLAK
Senior District Judge.

GABRIEL STANESCU; STELLA STANESCU
Plaintiffs-Appellants,

ORDER
#96-7071

v.

AETNA LIFE AND CASUALTY INSURANCE CO.,
Defendant - Appellee.

Appearing for Appellants:

Ronald L. Lepine
(Lepine & Associates, West Hartford, CT)

Joseph A. Ciaffaglione
(Lepine & Associates, West Hartford, CT)

Appearing for Appellee:

Dion W. Moore
(Williams, Cooney & Sheehy, Bridgeport, CT)

UPON CONSIDERATION of this appeal from a judgment of the United States

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The Honorable Louis H. Pollak, Senior District Judge of the United States District Court for the Eastern District of Pennsylvania, sitting by designation.

District Court for the District of Connecticut (Nevas, J.), it is hereby

ORDERED, ADJUDGED, AND DECREED that the judgment be and it hereby is AFFIRMED.

Gabriel and Stella Stanescu appeal from a judgment of the United States District Court for the District of Connecticut (Nevas, J.) granting a 12(b)(6) motion to dismiss entered on December 22, 1995.

The district court accepted the following facts as true for purposes of the 12(b)(6) motion: Gabriel Stanescu suffered a work-related injury to his back. He subsequently filed a claim for workers' compensation benefits and initially received them through his employer's workers' compensation carrier, Aetna. He underwent surgery, and after the surgery Aetna refused to pay compensation benefits in a timely manner and refused to authorize some treatments recommended by Stanescu's doctors. Aetna refused to settle Stanescu's claim and referred it to the Connecticut Second Injury Fund. Stanescu has experienced physical and psychological difficulties as a result of Aetna's action.

The court granted the defendant's motion to dismiss on the grounds that the facts alleged failed to demonstrate that Aetna had acted under the color of state law, and therefore that the Stanescus had failed to state a claim under Sec. 1983. On appeal, the Stanescus challenge this ruling.

We review a district court's dismissal of a complaint pursuant to Rule

12(b)(6) de novo. *See Leeds v. Meltz*, 85 F.3d51, 53 (2d Cir. 1996). In doing so we take all well-pleaded factual allegations as true, and we draw all reasonable inferences in favor of the plaintiffs. *Id* at 53. While this pleading standard is relatively easy for plaintiffs to meet, bald assertions and conclusions of law are not sufficient. *See Albert v. Carovano*, 851 F.2d. 561, 572-573 (2d Cir. 1988) (in banc).

A Sec. 1983 suit must be dismissed if the defendants did not act under the color of state law. *See* 42 U.S.C.A. Sec. 1983. All conduct that satisfies the state-action requirement of the Fourteenth Amendment satisfies the Sec. 1983 under-the-color-of-state-law requirement. *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 935 (1982). Appellants bear the burden of proving state action. *Hadges v. Yonkers Racing Corp.*, 918 F.2d 1079, 1083 n.3 (2d Cir. 1990), *cert. denied*, 499 U.S. 960 (1991).

The Stanescus argue that two aspects of the Connecticut's Workers' Compensation Act ("the Act") make Aetna's conduct state action.

First, they argue that because under state law the Workers' Compensation Act is the exclusive remedy available to the Stanescus, it is the state that enabled Aetna to deprive the Stanescus of their rights. They note (1) that the Connecticut Workers' Compensation Act, Conn. Gen. Stat. Sec. 31-274 to 31-555a, makes his employer's insurance carrier (in this case Aetna), Stanescu's exclusive source of relief for

injuries that occurred to him on the job, and (2) that this exclusive power enabled Aetna to mistreat Stanescu.

These facts are, however, insufficient to support the conclusion that Aetna is a state actor. As the appellant acknowledges, a private actor is not made a state actor merely as a result of state regulation, even if that regulation is an extensive and detailed. *Jackson v. Metropolitan Edison Co.*, 419 U.S. 345, 350 (1974). To determine whether specific regulatory control turns the decisions of a private entity into state action, "the inquiry must be whether there is a sufficiently close nexus between the State and the challenged action of the regulated entity so that the action of the latter may be fairly treated as that of the State itself." *Jackson*, 419 U.S. at 351. That a regulatory scheme grants a private actor a monopoly is not sufficient to demonstrate a "close nexus"; the appellant must show that the alleged state action is closely related to the actor's monopoly status. *Hadges*, 918 F at 1084. The facts alleged by the appellants do not show the required connection between Aetna's monopoly status and its alleged wrongful action in denying benefits. There is nothing, for example, in the Stanescus' allegations to suggest that the state-granted exclusivity in any way affected the decisions Aetna made.

Second, appellants contend that the relationship between the Second Injury Fund and Aetna is sufficient to make Aetna a state actor. They assert (1) that the state-created and administered Second Injury Fund replaces Aetna as a party to workers' compensation proceedings when a pre-existing

injury exists or when an insurance carrier is unable to pay a claim, and (2) that when the Second Injury Fund replaces Aetna, it "steps into the shoes" of the insurance carrier, and adopts Aetna's "rights, privileges and defenses." They conclude that his relationship between the Second Injury Fund and Aetna creates "joint participation" sufficient to establish state action.

As described by the appellants, the relationship between the Second Injury Fund and Aetna does not exhibit the kind of interdependence sufficient to constitute state action. The state had no direct financial interest in Aetna's success. Nor was Aetna a lessee of state property. *See Burton v. Wilmington Parking Authority*, 365 U.S. 715 (1961)(holding a private restaurant that leased state land to be a state actor because of financial interdependence); *Jackson*, 419 U.S. at 357-58 (limiting the holding in *Burton* to lessees of public property).

The relationship between Aetna and the Second Injury Fund also fails to show that Aetna "sufficiently received the imprimatur of the State so as to make [its decisions] 'state' action." *Blum v. Yaretzky*, 457 U.S. 991, 1003 (1982). The appellants do not assert that the State is directly or indirectly "responsible for the specific conduct" of Aetna. *Id.* at 1004. Nor have they claimed that the state "exercised coercive power" or significantly encouraged the conduct, overtly or covertly, so that the action "must in law be deemed to be that of the State." *Id.* The appellants have simply alleged that the state and private

insurer may both play a role in providing benefits under the scheme. As the appellants describe the process, the Second Injury Fund may on occasion replace the insurance carrier, but only after the carrier has made its decisions and committed acts like those complained of by the appellants[1].

[1]Because the appellants allege no facts indicating that the state reviews Aetna's decisions, we do not need to consider whether such state agency review of Aetna's actions might be enough to make an insurance carrier a state actor in the context of a workers' compensation scheme. Compare *Baksalary v. Smith*, 579 F. Supp. 218, 230-31 (E.D. Pa. 1984) holding state procedural review central to determination of state action) with *Barnes v. Lehman*, 861 F.2d 1383, 1387 (5th Cir. 1988) (declining to hold procedural review sufficient to create state action).

Since neither of the appellants' arguments show sufficient state involvement to make Aetna's decisions about Stanescu's benefits and medical treatment state action, we affirm the district court's judgment.

Hon. Guido Calabresi

Hon. Fred I. Parker

Circuit Judges.

Hon. Louis H. Pollak

Senior District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

GABRIEL & STELLA STANESCU :

v. :

No.3:95CV356(AHN)

AETNA LIFE & CASUALTY INS. CO.:

RULING ON MOTION TO DISMISS

Plaintiffs Gabriel and Stella Stanescu ("Stanescu") bring this action against the defendant Aetna Life & Casualty Insurance Co. ("Aetna") pursuant to 42 U.S.C. Sec. 1983. In the first court of the two-count complaint, Gabriel Stanescu alleges that Aetna's alleged failure to pay workers' compensation benefits to him and to authorize necessary medical treatment violates the Eighth and Fourteenth Amendment of the United States Constitution. In the

second count, Stella Stanescu asserts a state law claim for loss of consortium against Aetna. The Plaintiffs seek Sec. 3.5 million in damages.

Currently before the court is the plaintiffs' Motion for Leave to file An Amended Complaint [doc.# 13] and Aetna's Motion to dismiss [doc.# 4]. The plaintiffs' Motion for Leave to File and Amended Complaint [doc.# 13] is GRANTED. Although Aetna moved to dismiss the plaintiffs' original complaint, the allegations of the amended complaint do not affect the arguments before the court and the court, with the parties' consent, will construe Aetna's motion to dismiss to be addressed to the plaintiffs' Amended Complaint [doc. #15].

For the reasons that follow, Aetna's Motion to Dismiss' [doc.# 4] pursuant to Rule 12(b)(6), Fed. R. Civ. P., is

GRANTED. Because the court has dismissed the plaintiffs' federal law claim, it declines to exercise supplemental jurisdiction over Stella Stanescu's states law claim. The action therefore is DISMISSED in its entirely.

STANDARD OF REVIEW

In deciding a motion to dismiss pursuant to Rule 12(b)(6),the court is required to accept as true all factual allegations in the complaint and must construe any well-pleaded factual Allegations in the plaintiff's favor. See Scheuer v. Rhodes, 416 U.S. 232, 236 (1974); Easton v. Sundram,947 F. 2d 1011, 1014-15 (2d Cir. 1991), cert. denied, 504 U.S. 911 (1992). A court may dismiss a complaint only where "it appears beyond doubt that the plaintiff can prove no set of facts in

support of his claim which would entitled him to relief." Conley v. Gibson, 355 U.S. 41, 45-46 (1957); see also Allen v. Westpoint-Pepperell,Inc. 945 F.2d 40, 44 (2d Cir. 1991).

FACTS

For the purposes of this ruling, the court accepts the following facts as true.

On April 18, 1991, Gabriel Stanescu suffered a work-related injury to his back. He subsequently filed a claim for workers' compensation benefits and initially received benefits through his employer's workers' compensation carrier, Aetna.

On June 7,1991, Stanescu underwent spinal disc surgery. Following surgery, several physicians diagnosed him as totally disabled. After his surgery, Aetna began to refuse to pay workers' compensation benefits

in a timely manner and to authorize certain medical treatments recommended by Stanescu's physicians. Further, Aetna refused to settle Stanescu's claim and, on October 21, 1993, referred his claim to the Connecticut Second Injury Fund.

Other individuals with similar medical problems have been paid workers' compensation benefits and have obtained necessary medical treatment in at timely manner.

As a result of Aetna's actions, Stanescu's medical condition has worsened and he has experienced severe psychological difficulties. Additionally, he has suffered financial hardship including damage to his credit standing and the filing of liens upon his property. Gabriel Stanescu's medical and psychological problems have caused both serious financial hardships and psychological problems for Stella Stanescu.

Aetna is a publicly-owned insurance company regulated by the Connecticut Department of Insurance and the Connecticut Workers' Compensation Act. The Workers' Compensation Act provides the exclusive remedy to Stanescu to obtain compensation for his work-related injuries. Aetna has deliberately used the regulations enacted pursuant to the Workers' Compensation Act to deny Stanescu medical treatment to which he was entitled.

DISCUSSION

Section 1983 provides a civil cause of action for damages against any person who, acting under the color of state law, deprives another of a right, privilege or immunity secured by the Constitution or the laws of the United States. See 42 U.S.C. Sec. 1983. To state a claim under section

1983, a plaintiff must show both the existence of a federal constitutional or statutory right and the deprivation of that right by a person acting under color of state law. See Dwares v. City of New York, 985 F.2d 94, 98 (2d Cir. 1993)(citations omitted).

Leaving aside Stanescu's novel claims that the has a right to workers' compensation benefits or to medical care under the Eighth and Fourteenth Amendments, the court addresses whether Aetna acted under the color of state law when it acted pursuant to the Workers' Compensation Act, Conn. Gen. Stat. Sec. 31-274 to 31-555a, to refuse to pay benefits or to authorize medical treatment to Stanescu. The court finds that Aetna did not and that it therefore is not subject to suit under section 1983.

Stanescu does not dispute that Aetna is

a private actor. He argues, however, that Aetna's refusal to pay workers' compensation benefits and to authorize necessary medical treatment for his work-related injuries amounts to state action under section 1983 because Aetna was subject to pervasive State regulation pursuant to the Workers' Compensation Act and because Aetna intentionally used the procedures established under that regulatory scheme to deny him workers' compensation benefits and medical treatment.

Private conduct qualifies as state action when "(t)he State has so far insinuated itself into a position of interdependence with [the private party] that it must be recognized as joint participant in the challenged activity," Burton v. Wilmington Parking Auth., 365 U.S. 715, 725 (1961), or when "there is a sufficiently close nexus between the State

and the challenged action of the regulated entity so that the action of the latter may be fairly treated as that of the State itself." Jackson v. Metropolitan Edison Co., 419 U.S. 345, 351 (1974); see Hadges v. Yonkers Racing Corp., 918 F.2d 1079, 1081 (2d Cir. 1990), cert. denied, 499 U.S. 960 (1991). The Second Circuit has held that the close nexus test announced in Jackson provides the standard for determining whether state regulatory control of a private actor's conduct qualifies as state action. See Hadges, 918 F.2d at 1083 (citation omitted). Stanescu's regulatory argument therefore is properly analyzed under that test. See id. (citations omitted).

Stanescu does not contend that a State official directly was involved in Aetna's denial of his workers' compensation benefits. Instead, he points to the State's

regulation of the procedures by which worker' compensation insurance claims are administered and, if necessary, adjudicated. He argues that state law controls private participation in the workers' compensation system and that Aetna's use of the procedures available under the law effectively transforms Aetna into a state actor. The court disagrees.

The presence of state regulation alone does not convert a private actor's conduct into state action. See Blum v. Yaretsky, 457 U.S. 991, 1004 (1982) (holding that private nursing home not state actor despite operating under extensive state regulation and receiving ninety percent of fees from state); Rendell-Baker v. Kohn, 457 U.S. 830, 842 (1982) (holding that private school treating students with drug and alcohol problems not state actor despite having contract with state and receiving ninety

percent of funds from state); Jackson, 419 U.S. at 350 (holding that private utility not state actor despite extensive regulation); Rockwell v. Cape Code Hosp., 26 F.3d 254, 257 (1st Cir. 1994) (holding that private hospital who admitted mentally disturbed person to hospital pursuant to state law did not act under color of state law); Harvey v. Harvey, 949 F.2d 1127, 1131 (11th Cir. 1992) holding that private hospital designated under state law as facility for mentally ill not state actor within meaning of section 1983); Hadges, 918 F.2d at 1083 (holding that closely-held corporation operating race track did not act under color of state law in denying harness driver's request to work despite extensive state regulation). Nor does a private party's use of the procedures, or power, authorized under such regulations. See, e.g. Blum, 457 U.S. at 1006-07; Kohn, 457 U.S. at

841-42; Jackson, 419 U.S. at 357.

Stanescu's complaint does no more than allege that Aetna, a publicly owned corporation, acted pursuant to the Workers' Compensation Act to deny him workers' compensation benefits and medical treatment, to refuse to settle his claims, and to transfer his claims to the Second Injury Fund. Stanescu does not allege that a State official directly participated in Aetna's decision to deny him benefits or that the State requested such action. As the Jackson Court concluded, "Respondent's exercise of the choice allowed by state law where the initiative comes from it and not from the State does not make its action in doing so 'state action' for the purposes of the Fourteenth Amendment." Jackson, 419 U.S. at 357. This conclusion applies equally to Stanescu's section 1983 claim. See, eg., Kohn, 457 U.S. at 839 ("The ultimate issue

in determining whether a person is subject to suit under Sec. 1983 is the same question posed in cases arising under the Fourteenth Amendment: is the alleged infringement of federal rights 'fairly attributable to the State?'"). The court therefore finds that Stanescu has failed to allege sufficient facts demonstrating that Aetna acted under the color of state law in denying him benefits or refusing to authorize necessary medical treatments. Accordingly, the court finds that Stanescu fails to state a claim against Aetna under section 1983.

Because Stanescu has failed to show that Aetna acted under the color of state law, the court does not decide whether Stanescu has a right to workers' compensation benefits or medical treatment under the Eight or Fourteenth Amendments.

Additionally, because the court has

dismissed Stanescu's section 1983 claim, the court declines to exercise supplemental jurisdiction over Stella Stanescu's state law loss of consortium claim. See United Mine Workers v. Gibbs, 383 U.S. 715, 726 (1966).

CONCLUSION

The plaintiff's Motion for Leave to File an Amended Complaint [doc. #13] is GRANTED.

For the foregoing reasons, Aetna's Motion to Dismiss [doc. #4] is GRANTED and the complaint is DISMISSED in its entirety.

The Clerk shall enter judgment accordingly.

SO ORDERED this 13 day of December, 1995 at Bridgeport, Connecticut.

Alan H. Nevas
United States District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

GABRIEL & STELLA STANESCU

v.

CIVIL NO.3:95cv0356 (AHN)

AETNA LIFE & CASUALTY INS. CO.

J U D M E N T

The cause came on for consideration on the defendant's motion to dismiss before the Honorable Alan H. Nevas, United States District Judge, and The Court having considered the motion and all the papers submitted in connection therewith filed its Ruling on Motion to Dismiss granting the motion and further dismissed the complaint in its entirety as stated in the ruling,

It is therefore **ORDERED** and **ADJUDGED** that the matter be and hereby is dismissed in its entirety, accordance with the Court's

ruling.

Dated at Bridgeport, Connecticut this 22nd day of December, 1995.

KEVIN F. ROWE, Clerk

By_____
Carol E. Cannady

Sec.31-283e. Election of retirement benefits. Any compensation commissioner holding such office on July 1,1971, may elect to be included within the provisions of sections 51-49, 51-50, 51-50a 51-50b or to continue to be subject to the provisions of section 31-283.

Sec. 31-283f. Statistical division. (a) A statistical division shall be established within the Workers' Compensation Commission. the division shall compile and maintain statistics concerning occupational injuries and diseases, voluntary agreements, status of claims and commissioners' dockets. The division shall be administered by a full-time salaried director who shall be appointed by the chairman of the Workers' Compensation Commission under the provisions of chapter 67. The director shall report to

the chairman.

(b) Sufficient funding for the establishment and maintenance of the workers' compensation statistical division shall be supplied from the Administrative Costs Fund, as provided in section 31-345.

Sec. 31-283g. Division of worker education. There shall be within the Workers' Compensation Commission a division of worker education. The division shall provide, in convenient locations throughout the state, education services to employees concerning the prevention of occupational diseases and injuries, training for non-management employees in workers' compensation procedures and substantive rights, information to employers concerning known and suspected workplace hazards and training and information for medical professionals in workers' compensation procedures, standards and requirements. The division shall be administered by a full-time salaried director who shall be appointed by the chairman of the Workers' Compensation Commission under the provisions of chapter 67. The director shall be provided with sufficient staff to assist him in the performance of his duties. The director shall report to the chairman. The chairman of the Workers' Compensation Commission may adopt regulations, in accordance with the provisions of chapter 54, to implement the provisions of this section.

Sec. 31-283h. Financing of division of worker education. Section 31-283h is repealed.

II

EMPLOYER'S LIABILITY

Sec. 31-284. Basic rights and liabilities. Civil action to enjoin noncomplying employer from entering into employment contracts. Notice of availability of compensation. (a) An employer shall not be liable to any action for damages on account of personal injury sustained by an employee arising out of and in the course of his employment or on account of death resulting from personal injury so sustained, but an employer shall secure compensation for his employees as provided under this chapter, except that compensation shall not be paid when the personal injury has been caused by the wilful and serious misconduct of the injured employee or by his intoxication. All rights and claims between employer and employees, or any representatives or dependents of such employees, arising out of personal injury or death sustained in the course of employment are abolished other than rights and claims given by this chapter, provided nothing in this section shall prohibit any employee from securing, by agreement with his employer, additional compensation from his employer for the injury or from enforcing any agreement for additional compensation.

(b) Each employer who does not furnish to the chairman of the Workers' Compensation Commission satisfactory proof of his solvency and financial ability to pay directly to injured employees or other beneficiaries compensation provided by this chapter shall insure his full liability

under this chapter, other than his liability for assessments pursuant to sections 31-345 and 31-354 in one of the following ways: (1) By filing with the insurance commissioner in form acceptable to him security guaranteeing the performance of the obligations of this chapter by the employer; or (2) by insuring his full liability under this part, exclusive of any liability resulting from the terms of section 31-284b, in any stock or mutual companies or associations that are or may be authorized to take such risks in this state; or (3) by any combination of the methods provided in subdivisions (1) and (2) of this subsection as he may choose, subject to the approval of the insurance commissioner. If the employer wilfully fails to conform to any provision of this subsection, he shall be fined not more than one thousand dollars for each failure. In case of an alleged noncompliance with the provisions of this subsection, a certificate of noncompliance under oath, by the chairman of the Workers' Compensation Commission, shall constitute prima facie evidence of noncompliance.

(c) Each employer who does not furnish to the chairman of the Workers' Compensation Commission satisfactory proof of his solvency and financial ability to pay directly to the state treasurer the assessments required in sections 31-345 and 31-354 shall insure his full liability for the assessments in one of the following ways: (1) By filing with the insurance commissioner in form acceptable to him security guaranteeing the payment of the assessments by the employers; (2) by insuring his full liability for the assessments in any stock or mutual companies or associations that are or may be

authorized to take such risks in this state; or (3) by any combination of the methods provided in subdivisions (1) and (2) of this subsection as he may choose, subject to the approval of the insurance commissioner. The payment of the assessments required under sections 31-345 and 31-354 is a condition of doing business in this state and failure to pay the assessments, when due, shall result in the denial of the privilege of doing business in this state or to self-insure under subsections (b) and (c) of this section. If the liability for the assessments is insured, the insurance commissioner, or by a separate policy insuring the liability for the assessments, and otherwise meeting all of the requirements of the insurance commissioner. In the case of any employer who files acceptable security guaranteeing the liability for the assessments, failure to pay the assessments, when due, shall result in the denial of the privilege to self-insure under subsections (b) and (c) of this section.

(d) Any employer to whom a certificate of self-insurance has been issued pursuant to this section who fails or is unable to pay any compensation mandated by the provisions of this chapter, thereby requiring payment from the Second Injury Fund pursuant to section 31-355, shall be prohibited from self-insuring his liability under this chapter for a period of ten years from the date of the payment. The employer shall be required during the ten-year period to insure his full liability under this part, exclusive of any liability resulting from the terms of section 31-284b, in any stock or mutual companies or associations that are or may be authorized to take such

risks in this state. Failure to so insure his liability shall result in the denial of the privilege of doing business in this state.

(e) Whenever an employer fails to comply with the requirements of subsection (b) of this section, the attorney general may bring a civil action in the superior court for the judicial district of Hartford-New Britain* to enjoin the employer, until such time as he fully complies with such requirements, from entering into any contracts of employment as a result of which he will employ additional employees.

(f) Each employer subject to the provisions of this chapter shall post, in a conspicuous place, a notice of the availability of compensation, in type of not less than ten-point boldface. The notice shall contain, at a minimum, the information required by regulations adopted pursuant to section 31-279.

PART E*

SECOND INJURY FUND

Sec. 31-349. Compensation for second disability. Payment of insurance coverage. (a) The fact that an employee has suffered a previous disability, shall not preclude him from compensation for a second injury, not preclude compensation for death resulting from the second injury. If an employee having a previous disability incurs a second disability from second injury resulting in a permanent disability caused

by both the previous disability and the second injury which is materially and substantially greater than the disability that would have resulted from the second injury alone, he shall receive compensation for (1) the entire amount of disability, including total disability, less any compensation payable or paid with respect to the previous disability, and (2) necessary medical care, as provided in this chapter, notwithstanding the fact that part of the disability was due to a previous disability. For purposes of this subsection, "compensation payable or paid with respect to the previous disability" includes compensation payable or paid pursuant to the provisions of this chapter, as well as any other compensation payable or paid in connection with the previous disability, regardless of the source of such compensation.

(b) As a condition precedent to the liability of the Second Injury Fund, the employer or his insurance carrier shall, no earlier than one year and no later than ninety days before the expiration of the first one hundred four weeks of disability, notify the custodian of the Second Injury Fund of the pending case and shall furnish to the custodian a copy of the agreement or award together with all information supporting his claim as to the liability of the Second Injury Fund, including specific designation of the injury in the claim to be transferred, and shall make available to the custodian any medical reports that the custodian requests. The employer by whom the employee is employed at the time of the second injury, or his insurance carrier, shall in the first instance pay all awards of compensation and all medical expenses

provided by this chapter for the first one hundred four weeks of disability. Failure on the part of the employer or the carrier to comply doesn't relieve the employer or carrier of its obligation to continue furnishing compensation under the provisions ofthis chapter. If the custodian rejects the claim of the employer and its insurer, the question shall be submitted to the commissioner having jurisdiction, as promptly as possible, and the employer or carrier shall continue furnishing compensation until the outcome is finally decided. If the employer or carrier prevails, all payments made beyond the one-hundred-four-week period shall be reimbursed to the employer or carrier by the Second Injury Fund. After the employer or its insurer has completed payment for the one-hundred four-week period, he shall file with the commissioner having jurisdiction, and with the custodian of the Second Injury Fund, a form indicating that all compensation and medical bills have been paid for the one-hundred-four week period, and indicating the date the custodian was notified of the pending case. The employer shall file the form with the commissioner having jurisdiction and the custodian of the Second Injury Fund no later than one year after the expiration of the one-hundred-four-week period, and thereafter, all responsibility for compensation and medical treatment shall be with the custodian of the second injury fund if the employer fails to file the form with the commissioner having jurisdiction and the custodian of the Second Injury Fund within one year after the expiration of the one-hundred-four-week period.

(c) If the second injury of an

employee results in the death of the employee, and it is determined that either the second injury or death would not have occurred except for a preexisting permanent physical impairment, the employer or his insurance carrier shall, in the first instance pay the funeral expenses described in this chapter, and shall pay death benefits as may be due for the first one hundred four weeks. No earlier than one year and no later than ninety days before the expiration of the one-hundred-four-week period, the employer or his insurance carrier shall notify the custodian of the Second Injury Fund of the pending case and shall furnish to the custodian a copy of the agreement or award. After the employer or its insurer has completed the payment for the one-hundred-four-week period, he shall file with the commissioner having jurisdiction, and with the custodian of the Second Injury Fund, a form indication that all compensation has been paid for the one-hundred-four-week period, and indicating the date that the custodian was notified of the pending case. The employer shall file the form with the commissioner having jurisdiction an the custodian of the Second Injury Fund no later than one year after the expiration of the one-hundred-four-week period, and thereafter, all responsibility for compensation shall be with the custodian of the Second Injury Fund. An employer or its insurer may not transfer liability for a claim to the Second Injury Fund if the employer fails to file the form with the commissioner having jurisdiction and the custodian of the Second Injury Fund within one year after the expiration of the one-hundred-four-week period.

(d) Employees shall not be denied any

compensation provided by any provisions of this chapter by reason of the execution of an acknowledgement of any physical condition which imposes upon his employer or prospective employer a further or unusual hazard, but the compensation specified in this chapter which would be payable except for the execution of the acknowledgement shall be paid entirely out of the Second Injury Fund. Claims for compensation shall be filed with the commissioner, who shall refer such claims to the custodian of the Second Injury Fund. The custodian of the Second Injury Fund may make payment by way of final settlement in any matter concerning the fund, subject to the approval of the commissioner, when it is for the best interests of the injured employee.

(e) In any case where compensation payments to an individual for total incapacity under the provisions of section 31-307 continue for more than one hundred four weeks, the cost of accident and health insurance or life insurance coverage required under section 31-284b shall be paid to the employer as reimbursement out of the Second Injury Fund after the one-hundred-fourth week. As a condition precedent to the liability of the Second Injury Fund, the employer shall, no earlier than sixty days before the expiration of the one-hundred-four-week period, notify the custodian of the Second Injury Fund that such payment is required. The employer shall also furnish to the custodian all information supporting the claim as to liability of the Second Injury Fund and shall make available to the custodian all medical reports as the custodian shall request. The fund's liability for the costs of the coverage

shall begin sixty days after the date the custodian is so notified. Failure on the part of the employer to comply does not relieve the employer of its obligation to continue furnishing compensation under the provisions of section 31-284b.

(f) On or after January 1, 1985, if an employer removes all or substantially all of its industrial or commercial operations to a location outside the state of Connecticut or permanently shuts down all its operations within a business facility locate in this state and fails to comply with the provisions of section 31-284b, the cost of accident and health insurance coverage for any employee receiving compensation pursuant to this chapter shall be paid out of the Second Injury Fund. The employee shall notify the custodian of the Second Injury Fund that coverage is needed with due diligence upon notification to the employee of the employer's failure to comply with the section 31-284b. The fund shall be liable for the cost of insurance coverage which is equivalent to the coverage provided for the employee prior to the relocation or shutdown of the employer's operations. The fund's liability for the costs of the coverage shall begin fifteen days after the custodian is so notified and shall continue as long as the individual receives compensation pursuant to this chapter provided the fund shall not be liable for any costs incurred by the individual (1) prior to the date the notice is received or (2) during the fifteen-day period after the notice is received if the custodian determines during such period that the individual is ineligible for the costs of the coverage under this subsection.

(g) The Second Injury Fund shall be liable for the cost of insurance coverage for any employee being paid out of the second injury fund on or after January 1, 1990, who was injured on or after January 1, 1980, but before January 1, 1982, and is otherwise eligible to be paid out of the fund pursuant to subsection (f) of this section.

Sec. 31-349a. Powers of investigators in the Workers' Compensation Commission. Any investigator in the investigations unit of the Workers' Compensation Commission, when investigating claims which may violate the requirements of this chapter and when conducting an investigation at the request of the commission or a commissioner, shall have the powers, as described in section 54-If, of a peace officer as defined in subdivision (9) of section 53a-3.

Sec. 31-349b. Certificate for permanent vocational disability. Employer reimbursed by Second Injury Fund for insurance premiums for certified employees (a)

Sec. 31-353. Voluntary agreements; approval. If the treasurer and an injured employee, or his legal representative, reach an agreement in regard to compensation payable under section 31-349, such agreement shall be submitted in writing to the commissioner for his approval and, upon approval, shall remain in effect until otherwise ordered by the commissioner. He may make payment by way of final settlement in any matter concerning the fund, subject to the approval of the commissioner, whenever it is for the best interests of the injured employee.

Sec. 31-354. Second Injury Fund contribution. Duties and powers of state treasurer. There shall be a fund to be known as the Second Injury Fund. Each employer, other than the state, shall, within thirty days after notice given by the treasurer, pay to the state treasurer for the use of the state a sum not to exceed five per cent of the total amount of money expended by the employer, by a private insurance carrier on his behalf, by an interlocal risk management agency on his behalf or by the fund pursuant to section 31-355 in payment of his liability under this chapter for the preceding calendar year. Any employer who fails to pay the sum to the treasurer within the time prescribed by this section shall pay interest to the treasurer on the sum at the rate of fifteen per cent per annum from the date the sum should have been paid until the date of payment. The treasurer shall notify each employer of the penalty provision with the notice of assessment. The assessment shall base levied by the state treasurer at any time the balance remaining in the fund is so reduced that he deems it necessary to request further assessments into cover expenditures and to maintain a reserve of one million dollars but not to exceed five per cent per assessment. Effective July 1, 1993, whenever the assessment is levied, the treasurer shall pay to the fund, on behalf of the state, a sum not to exceed the total amount of money expended by the fund on behalf of the state employees during the period following the last assessment. The sums received shall be kept separate and apart from all other state moneys and the faith and credit of the state of Connecticut us pledged for their safekeeping. The treasurer shall be the custodian of the fund

and all disbursements from the fund shall be made by him or his deputies. The moneys of the fund shall be invested by him in accordance with applicable law. Interest, income and dividends from the investments shall be credited to the fund. Each employer, each private insurance carrier acting on behalf of any employer and each interlocal risk management agency acting on behalf of any employer shall annually, on or before April first, report to the treasurer, in the for prescribed by the treasurer, the amount of money expended by or on behalf of the employer in payments for the preceding calendar year. The fund shall be used to provide the benefits set forth in section 31-306 for adjustments in the compensation rate and payment of certain death benefits, in section 31-307b for adjustments where there are relapses after a return to work, in section 31-307c for totally disabled persons injured prior to October 1, 1953, in section 31-349 for disabled for handicapped employees and in section 31-355 for the payment of benefits due injured employees whose employers or insurance carriers have failed to pay the compensation, and medical expenses required by this chapter, or any other compensation payable from the fund as may be required by any provision contained in this chapter or any other statute and to reimburse employers or insurance carriers for payments made under subsection (b) of section 31-307a. The assessment required by this section is a condition of doing business in this state and failure to pay the assessment, when due, shall result in the denial of the privilege of doing business in this state or to self-insure under section 31-284. Any administrative or other costs or expenses incurred by the treasurer in connection with carrying out

the provisions of this part, including the hiring of necessary employees, shall be paid from the fund. The treasurer may adopt regulations, in accordance with the provisions of chapter 54, prescribing the practices, policies, and procedures to be following in the administration of the Second Injury Fund.

Sec. 31-354a. Assistant Administrators of the Second Injury Fund. (a) The treasurer may, in his discretion, appoint not more than four assistant administrator as necessary to assist him in carry out his duties as custodian of the Second Injury Fund under section 31-354 Such assistant administrators shall be sworn to the faithful discharge of their duties and shall perform such functions relating to the administration of the Second Injury Fund under sections 31-275 to 31-355a, inclusive, as the treasurer may direct.

(b) Any administrative and personnel costs incurred pursuant to subsection (a) of this section shall be paid from the Second Injury Fund.

Sec. 31-355. Hearings; awards. Payments from Second Injury Fund on employer's failure to comply with award. Civil action for reimbursement. Insolvent insurer. (a) The commissioner shall give notice to the treasurer of all hearing of matters which may involve payment from the Second Injury Fund, and may make an award directing at the treasurer to make payment from the fund.

(b) When an award of compensation has been made under the provisions of this chapter against an employer who fails or is

unable to pay medical and surgical aid or hospital and nursing service required under this chapter or any type of compensation for disability, or both whether for total or partial disability of a permanent or temporary nature, death benefit, funeral expense, or any adjustment in compensation required by this chapter, and whose insurer fails or is unable to pay the compensation, such compensation shall be paid from the Second Injury Fund. The commissioner, on a finding of failure or inability to pay compensation, shall give notice to the treasurer of the award, directing the treasurer to make payment from the fund. Whenever liability to pay compensation is contested by the treasurer, the treasurer shall file with the commissioner, on or before the twenty-eight day after he has received an order of payment from the commissioner, a notice in accordance with a form prescribed by the chairman of the Workers' Compensation Commission stating that the right to compensation is contested, the name of the claimant, the name of the employer, the date of the alleged injury or death and the specific grounds on which the right to compensation is contested. A copy of the notice shall be sent to the employee. The commissioner shall hold a hearing on such contested liability at the request of the treasurer or the employee in accordance with the provisions of this chapter. If the treasurer fails to file the notice contesting liability within the time prescribed in this section, the treasurer shall be conclusively presumed to have accepted the compensability of such alleged injury or death from the Second Injury Fund and shall have no right thereafter to contest the employee's right to receive compensation on any grounds or contest the

extent of the employee's disability.

(c) The employer and the insurer, if any, shall be liable to the state for any payments made out of the fund in accordance with this section or which the state has by award become obligated to make from the fund, together with cost of attorneys' fees as fixed by the court. If reimbursement is not made, or a plan for payment to the fund has not been agreed to by the treasurer and employer, within ninety days of any payment from the fund, the attorney general shall bring a civil action, in the superior court for the judicial district where the award was made, to recover all amounts paid by the fund pursuant to the award, plus double damages together with reasonable attorney's fees and costs as taxed by the court. Any amount paid to the treasurer by the employer or insurer after the filing of an action, but prior to its completion, shall be subject to an interest charge of eighteen per cent annum, calculated from the date of original payment from the fund.

(d) Any recovery made under this section, including any recovery for costs or attorney's fees, shall be paid into the fund. Any administrative or other costs or expenses incurred by the attorney general in connection with carrying out the purposes of this section, including the hiring of necessary employees, shall be paid from the fund. The treasurer shall adopt regulations, in accordance with this he provisions of chapter 54, which describe what constitutes a proper and sufficient "plan for payment to the fund" for the purposes of this section.

(e) Notwithstanding the provisions of subsections (a) to (d), inclusive, of this section, whenever the employer's insurer has been determined to be insolvent, as defined in section 38a-838, payments required under this section shall be the obligation of the Connecticut Insurance Guaranty Association pursuant to the provisions of sections 38a-836 to 38a-853, inclusive.

PROOF OF SERVICE

I hereby certify under penalty of perjury that copies of the petitioner's Brief and Appendix were service on as of follows:

In-Hand Delivery to:

Office of the Clerk
United States Court of Appeals
for the Second Circuit
United States Courthouse
40 Toley Square
New York, New York 10007

(Original and 10 copies)

Regular U.S. Mail to:

Dion W. Moore, Esq.
Williams, Cooney & Sheehy
One Lafayette Circle
Bridgeport, Connecticut 06604

_____
Ronald Lepine

42 U.S.C. Section 1983 reads, in pertinent part:

"Every Person who, under color of any statute, ordinance, regulation, custom or usage, of any State...subjects or causes to be subjected, any citizen of the United States ...to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."